DARLEY'S ADMISSIONS ABOUT FRANK'S DEFENSE OFFSET BY HIS EVIDENCE IN REBUTTAL

Having Admitted Frank Trembled, That He Was Pale and Seemed "Upset," on Cross-Examination Mr. Darley Said Frank Was Naturally of a Nervous Temperament and Told of Tedious Work He Did on Saturday in Preparing Financial Sheet

JUDGE ROAN REVERSES HIS RULING IN REFERENCE TO EVIDENCE ABOUT WHETHER OTHERS WERE NERVOUS

Attorneys for Defense Had Intimated That His Refusal to Admit This Evidence Was Good Ground for Appeal—Mrs. White's Testimony That She Saw Negro Lurking Near Stairway at 1 o'Clock Saturday a Feature of Morning Session

Little progress was made at the morning session Friday of the fifth day of the trial of Leo M. Frank for the murder of Mary Phagan. The state showed by one witness that a negro was sitting on a box on the main floor shortly before 1 o'clock at the point Jim Conley claims he was sitting when he says Frank called him.

The state also introduced its best testimony relative to the nervousness and general demeanor of the defendant on the morning that the crime was discovered.

The witness, who gave his testimony was N. V. Darley, who also materially aided the defense by a number of points brought out on his cross-examination by Attorney Reuben R. Arnold. Considered of special value to the defense was his statement that with the time clock in the condition that it was on Sunday anyone understanding its mechanism could have made the punches for twelve hours within five minutes. The defense, brought out by Darley a statement that it had been hammering home since the trial first started, namely that the elevator and its motor made much noise when running and that a saw on the fourth floor ran simultaneously with the elevator. The inference is that the defense will argue that if the elevator ran shortly after noon or even up to 3 o'clock that White and Denham, working on the fourth floor, would necessarily have heard it.

The same witness also asserted that a financial sheet gotten up Saturday afternoon was in Frank's handwriting and that it takes three hours or more to do this work.

The defense made a timely rebuttal of Darley's testimony that Frank displayed unusual nervousness following the discovery of the murder, and used Darley himself to refute, to a certain extent, his own testimony. Solicitor Dorsey, in his examination of the witness had drawn the statement from him that the accused was nervous, that his hand trembled when he went to run the elevator, and that he was pale and was trembling when he rode to the police station. When Attorney Arnold took the witness he drew from him the assertion that Mr. Frank was of a natural nervous temperament and that frequently he (Darley) had to take charge of affairs at the factory, prior to the murder, on account of the accused's nervousness. Frank, declared Darley, often rubbed his hands together and was unable to do much work when he was in one of his nervous states.

Mrs. White was also an important witness in reference to Frank's nervousness, declaring that when she went into the factory at about 12:30, just after the state claims the crime was committed, Frank jumped when she spoke to him.

When court convened after lunch, Judge Roan reversed himself on his ruling at the morning session. By reversing this ruling he holds now that the defense may introduce evidence to show that others besides the accused were nervous at the pencil factory following the discovery of the body of Mary Phagan. Attorney Rosser, for the defense, had indicated in a remark to the court at the morning session that the defense would likely appeal the case on this point if the jurist held to his ruling.

Judge Roan also announced his decision in the matter of Darley testifying relative to the contrast or comparison of handwriting on the financial sheet made out by Frank on the Saturday of the murder and others made out prior to that date. Judge Roan held

that Darley would have to qualify as a handwriting expert to testify along these lines.

STATE INTRODUCES WITNESSES.

Mr. Arnold, in a discussion with attorneys for the state, made the remark that the prosecution need not fear that he would fail to introduce evidence. If the defense introduces any evidence at all, as the attorneys now think it will, it will probably introduce many witnesses and the trial will be prolonged a number of days.

At the close of the morning session Friday the indications were that the state would not close its case until Tuesday or Wednesday of next week. Jim Conley, the state's principal witness, has not been called yet, and probably will not be until Saturday. It will take a whole day if not longer for his examination.

COURT CONVENES.

At 8:40 o'clock the crowd was admitted to the court room, filling the seats immediately and leaving a number of disappointed people outside. A large part of the crowd had been waiting since 7 o'clock.

Leo M. Frank, the accused, arrived early, under custody of the sheriff. He entered the court room at 8:50 o'clock, with his wife and mother, smiling cheerfully, and responding to greetings of a number of friends.

Mrs. J. Arthur White was called to the stand as the first witness. Her husband has been employed by the National Pencil company for the past two years, she said.

On April 26, she testified, she went to the National Pencil factory twice. The first time she remained from 11:30 to 11:50 o'clock. She returned at 12:30 and left about 1. On the first visit she stated she saw Miss Hall, the stenographer, and Frank and two men in his office.

"I asked Mr. Frank if I could see Mr. White. Mr. Frank then was standing in the inside office. He asked me if I was Mr. White's wife, and when I answered yes, he said I looked like a Campbell."

The witness explained that her father and brother, named Campbell, had been working for two years in the National Pencil factory.

"Mr. Frank sent Miss Emma Freeman for Mr. White and he came down and talked to me at the foot of the steps on the second floor."

Solicitor Dorsey questioned the witness about her second visit to the factory. Mrs. White said that she looked at the clock when she arrived on her second visit, and that the time was about 12:30, possibly one minute to or after that hour.

SAYS FRANK JUMPED.

"When I came up the steps," she said, "I saw Mr. Frank standing by the safe in the outside office. His back was turned to me. I asked him if Mr. White and Mr. Denham had gone back to work.

"He jumped, as if surprised."

"Is there any doubt about his jumping?" asked the solicitor.

"No."

"What was he doing at the safe?"

"I didn't see him doing anything."

"What did you do?"

"I went upstairs to the fourth floor, where Harry Denham and my husband were working. They were working on a machine with a hammer. I heard the hammer distinctly when I reached the fourth floor. They quit work when I came up."

"How many times did you have to ask Mr. Frank if White and Denham were at work?"

"I had to repeat my question."

The witness testified that while she was upstairs, about 1 o'clock, Frank came up and told her that she would have to leave then if she expected to get out before 3 o'clock, because he was going out and intended to lock the doors behind him.

"What time did you leave?"

"Some time about 1 o'clock."

"Was it before or after 1?"

"It was before 1."

"How do you know it was before 1?"

"Because I was in McDonald's furniture store at 1 o'clock."

"And how far is that from the pencil factory?"

"Five or six blocks."

"How much before 1 do you say it was?"

"About ten minutes."

Mrs. White said that Frank preceded her down the stairs. She left the building.

SAW A NEGRO ALSO.

When she went by the office on her way out Frank was sitting by a table in the outer office, with his coat off.

"What was he doing at the table?"

"I suppose he was writing."

"What led you to believe he was writing?"

"Well, he was sitting there."

"As you came down the steps from the second floor did you see anybody?"

"Yes, a negro."

"Where was he?"

"Sitting on a box to the bottom of the stairway leading from the second floor."

"Did you see his coat?"

"No."

"Did you see his hat?"

"No."

Solicitor Dorsey walked up to the witness stand with Mary Phagan's parasol and handing it to Mrs. White asked her to point out the spot on the diagram where the negro was sitting. She pointed to a place in the lower hallway, near the stairway. The solicitor also asked her to point out the place on the fourth floor where Denham and White were working. She put the end of the pointer on a place several feet toward the front of the building from the top of the stairway on the fourth floor.

"Could they see down the stairway from where they were working?"

"No, sir."

ROSSER TAKES WITNESS.

Mr. Rosser took up the cross-examination of the witness.

"You left the factory about 1 o'clock, Mrs. White?"

"Yes."

"You are not sure as to the exact time?"

"No, sir."

"How long after 1 o'clock was it that you reached the furniture store?"

"I don't know exactly."

"You won't say positively that it was ten minutes to 1 when they left the factory?"

"No, sir, not positively."

"It was somewhere about 1 o'clock?"

"Yes, sir."

"Where is that furniture store, and how far from the factory?"

"It is on Mitchell street beyond the Terminal station."

"Did you walk there directly from the factory?"

"Yes, sir."

Mr. Rosser stopped to refer to a statement which the witness furnished to the defense some time ago.

"You say it was about 1 o'clock when you left the factory, but you didn't look at the clock?"

"Yes, sir. It was about 1. I did not look at the clock."

"You got to the factory the first time about 11:30 o'clock?"

"Yes."

"And you say you found there two men whose names you didn't know, Mr. Frank and the stenographer, Miss Hall?"

"Yes."

"You didn't see the office boy, Alonzo Mann?"

"No."

"You went in and sat down in Frank's office?"

"Yes."

"He was talking to two men?"

"Yes."

"After he had finished talking to the two men he came over to you, did he not?"

"Yes."

"You told him you wanted to see Mr. White?"

"Yes."
"Did you see your brother, Wade Campbell, or your father, there?"

FRANK SENT WORD.

"No, sir."

"They both work there, do they not?"

"Yes."

"Frank sent word up to White that you were downstairs and wanted to see him, did he not?"

"Yes."

"By whom did he send this word?"

"By Mrs. Emma Freeman."

The witness said that Mrs. Emma Freeman formerly was Miss Emma Clark, and had married just the day before.

"How long was it before White came down?"

"About five minutes."

"Where was it you talked with him?"

"Outside of the office, near the time clock."

"How long did you talk with him there?"

"About fifteen minutes."

"Who came up while you were talking to your husband?"

"Cornelia Hall, Mrs. Freeman and Mrs. Mae Barrett."

The witness added that these three came down the stairs. "Mrs. Barrett's daughter also came in, coming upstairs," she continued.

"Who left first?"

"Miss Hall and Mrs. Freeman."
"Who next?"

"Mrs. Barrett and her daughter."
"You left last?"

"Yes, sir."

"What time was it when you left?"

"About 19 minutes to 12 o'clock."

"You couldn't say accurately as to the time you left?"

"No, sir."

"You went somewhere up town—we don't care where—did you not?"

‘Yes, sir."

"How long did you stay?"

"About 40 minutes."

"And you came back to the factory about 12:30?"

"Yes, sir it was 12:30."

"How do you know?"

"I looked at the clock that time."

"Where did you say Frank was when you came back?"

"He was standing in front of the safe in the outer office."

WHAT WAS FRANK DOING?

"What was he doing? Did he look like he was taking something out of the safe, or putting something into the safe?"

"He didn't appear to be doing anything."

"Was the safe door open?"

"Yes."

"When the safe door is open, it closes up against the inside office door, does it not?"

"Yes."

"When you spoke to Frank, where were you?"

"I was inside the office door and just behind Mr. Frank."

"And he appeared startled?"

"Yes sir."

"Acted as a person does when some one comes up on them unexpectedly?"

"Yes, sir; that's what I thought."

"You asked Frank if White still was upstairs?"

"Yes, sir."

"What did Frank say?"
"He told me that he was, and suggested that I go on upstairs, which I did."

"After a while Frank came up and asked your husband and Harry Denham if they had finished their work?"

"I don't know, sir. I didn't hear him ask that."

"You heard him say to your husband if your wife wants to get out before 3 o'clock she'd better go pretty soon?"

"I'm not sure as to the exact words he used."

WHAT FRANK SAID.

Here Mr. Rosser read from the statement which had been furnished to him by the witness: "If you wife wants to get out before I go to lunch," read Mr. Rosser, "she'd better get out in a few minutes, for I'm going as soon as I get my hat and coat."

Mrs. White said that was about the language used by Frank.

"You remained a few minutes after Frank went down?"

"Yes."

"And when you came down to the office floor, you saw Frank at a table in the outer office, writing?"

"Yes."

"You then went on down the steps to the street floor?"

"Yes."

"As you came down, just where did you see the negro?"

"Between the stairway and the door."

"Just what do you mean by between the stairway and the door? Between the front of the stairway and the door?"

"Yes."

"How far from the front of the stairs?"

"About five or six feet."

Attorney Rosser asked the witness to point out, on a blue print of the plant which he produced, the spot where she saw the negro. He brought from the witness a statement that she had talked with Solicitor Dorsey about two weeks after the tragedy.

Attorney Frank Hooper took up the re-direct examination.

"The negro was not sitting against the wall, was he?"

"No."

DARLEY TESTIFIES.

The witness was excused. Solicitor Dorsey called Arthur White, who did not answer. He called Arthur Denham, who did not answer. Then he called N. V. Darley, who took the stand.

Mr. Darley stated that he has charge of the employes at the National Pencil factory. His immediate superior is Sig Montag. Darley is a co-worker and rated equally with Frank. Mr. Darley stated that he was in the factory on Saturday, April 26; that he left there about 9:40 a. m., and that he returned there the following day at 8:18 or 8:20 o'clock in the morning, and as he came in Mr. Frank came up.

"Did you observe anything unusual about Frank?" asked the solicitor.

"Not at first, but when we got into the elevator and he reached for the rope, I noticed that his hands were trembling. His hands still were trembling when he started to nail up the door in the basement. I took the hammer from him because his hands were trembling and he was nervous, and also because I could handle the hammer better."

The statement that he thought he could handle the hammer better was ruled out after some discussion.

Darley said that he could not remember very well the conversations that morning. Asked specifically if he remembered Frank saying anything about coffee, he said:

"Yes, as we were starting away from the factory, he said that he had been called from home without any breakfast or coffee, and that they had taken him straight down to the undertaker's into a dark room where they suddenly flashed on a light and he instantly saw the corpse, and that he was nervous. He said that he wouldn't have been nervous if he'd had a chance to get some breakfast."
The witness continued that he remembered that at 10 o'clock Frank telephoned to his home about getting his breakfast ready.

Darley was asked about the elevator. The key of the lock to the power box was in place, but the box was not locked that morning. He didn't know where the key was. He saw Newt Lee that morning, he said, in answer to a question, and Lee seemed to be composed.

"What did Frank say with reference to the staple and the hasp?" asked the solicitor.

"Frank referred to the easy manner in which they could be pulled out and seemed to think that the crime was committed in the basement."

The witness' statement that Frank "seemed to think" the crime was committed in the basement, was ruled out.

Darley said that the staple in the back door looked like it had been pulled out before. It was black, he said, and usually when a staple is pulled out the first time it looks rather red.

"You said Frank intimated that the murder occurred in the basement. What were his words?" inquired the solicitor.

"I don't remember."

FRANK TALKED OF NERVOUSNESS.

"The day after this talk about coffee, did you talk with Frank about coffee again or his condition on that day?"

"Yes."

"What did he say?"

"About the same thing."

"Did he say next day anything about being nervous?"

"Yes."

"How many times did you hear him explain, or try to explain, his nervousness?"

"Numerous times. I don't remember the exact number."

Mr. Dorsey asked permission to read to the jury a statement that Darley previously had made to him. Attorney Rosser objected. The solicitor contented himself with showing the statement to Mr. Darley to refresh his memory. He asked Darley this question after the witness had scanned the paper.

"Now what was more on Frank's mind—the murder of the explanation of his nervousness?"

Attorney Rosser jumped to his feet. "That' wont' do!" he exclaimed. Judge Roan sustained the objection.

"I think I should be permitted to read this statement to the jury, your honor," said Mr. Dorsey, addressing the court. A heated colloquy between attorneys followed. Attorney Arnold, seated, said: "He hasn't made his usual showing, your honor, that he has been entrapped."

"I don't hesitate to do it," replied Mr. Dorsey.

"You don't hesitate to do anything," said Mr. Arnold.

It appeared that Judge Roan ruled against reading the statement.

"How much of his body shook?" the solicitor inquired.

Darley answered that he couldn't remember.

"Tell the truth about this statement," admonished the solicitor.

Darley replied: "My words there are that he shook all over."

"Is that true or not?"

Mr. Rosser objected. The solicitor had no right to cross-question his own witness, said Mr. Rosser. Judge Roan sustained Mr. Rosser.

"When and where was it that you first saw Frank shaking all over?"

HAND WAS TREMBLING.

"When we were going down in the elevator. He reached up to pull the rope, and his hand was trembling. I can't say positively about his body, though."

"Could Frank or not have driven the nails in the back door?"

"I guess he could, but I thought I could do it better."

The solicitor showed Mr. Darley his statement and asked "What do you say now?"

"Just the same," was the reply.

"How did Frank look Sunday morning?"

"Pale."

"Can you or not say that he was upset?"

Attorney Rosser objected. "The solicitor can't say ‘upset,' your honor." "Oh, yes, I can," retorted the solicitor. "I guess the jury knows that ‘upset' means. I'll cite you some authorities on that."

Solicitor Dorsey read several authorities tending to show that his questions were proper. One of these set out that it could be shown that a person was nervous, worried, excited, preoccupied, pale and that it was proper to develop evidence as to his movements, appearance, behavior and bearing.

Judge Roan interrupted, declaring: "That doesn't touch the point we have up here now, Mr. Dorsey. The witness says that the defendant was nervous. He must show how and why he was nervous."

QUESTION IS ALLOWED.

"Why does your honor select the word ‘nervous'?" inquired the solicitor. "'Upset' is a term which is well understood by the members of this jury and I dare say by every one in this court room."

"Go ahead and ask him the question," directed the court.

"Mr. Darley," commanded the solicitor, "just state to this jury whether or not Leo M. Frank appeared upset on that Monday morning, and if so why and how."

The witness replied that he wouldn't say as to that.

"Now, look here," shouted the solicitor, as he advanced toward the witness with the latter's written statement.

Attorney Rosser, jumping to his feet, declared "Your honor, he can't do that. He can't snarl at this witness. He mustn't talk to this witness in that manner. This is his own witness, and he can't dispute him."

"Your honor," answered the solicitor, "I've got a right to show by this witness Frank's conduct and manner. I want to read you another decision, to show you that I've got that right."

The solicitor then read a decision which was to the effect that it could be shown whether a person accused had appeared wild, whether he had shown satisfaction or dissatisfaction, and several other specific terms of conduct.

"Let him get the law!" shouted Mr. Rosser.

Before Solicitor Dorsey could send for the laws, Judge Roan addressing the solicitor said: "I don't need the laws. I understand perfectly what can be done. You can't ‘wild' and stop there without explaining how and why."

Addressing the witness, Solicitor Dorsey asked:

"Say whether or not on Sunday morning, April 27, Leo M. Frank looked upset. If so, why. State the reasons to the jury."

Darley answered that Frank did appear upset. Solicitor Dorsey submitted the witness' previous statement to him, and after he

had read a paragraph indicated by the solicitor, the solicitor asked:

"Have you answered those questions now as you did before?"

"I object, your honor," said Mr. Rosser. "He can't ask the witness that question."

Judge Roan sustained Mr. Rosser.

FRANK "DONE UP."

The solicitor then put his question to the witness:

"Do you state whether or not Leo M. Frank was or was not completely done up? Whichever way you state, give your reasons."

"Wait a minute!" spoke up Mr. Arnold. "'Done up' might mean that he was dead. It might mean anything else. We object to that."

"I'll risk the jury on the meaning of that," said the solicitor.

Attorney Rosser interrupted.

"Your honor," said he, "will decide on risking the jury—not my friend Dorsey."

The court permitted the solicitor to ask the question.

Darley replied, "He was partially done up. That's as far as I can state now."

"Why do you say ‘partially'?" asked the solicitor.

"Well, Mr. Frank was able to attend to some business around the factory, and if he had been completely done up he couldn't have done that."

"Did you take an automobile ride with Frank Sunday morning?"

"Yes. I went in an automobile with him to the station house."

"Where did you sit in the automobile?"

"On the front seat besides Rogers, the driver."

"Where did Frank sit?"

"He sat on my left knee."

"Well, what was his condition then?"

"He was trembling and shaking."

"Was Newt Lee in the automobile?"

"Yes."

"Well, was Newt Lee composed or nervous?"

LEE'S TESTIMONY VALUELESS?

Attorney Rosser objected. The court previously had ruled out such a question. Judge Roan asked the solicitor if he insisted upon putting the question. Both Solicitor Dorsey and Attorney Hooper addressed the court, declaring the state's willingness for everything to go out of the record about Newt Lee.

Attorney Rosser insisted that whatever was to be withdrawn from the record must be stated specifically. Jduge Roan directed the solicitor to sit down and draw up what he wished withdrawn from the record. The solicitor declared it would be impossible. It would be an interminable job, said he.

Attorney Rosser sought to explain to the court what questions with reference to Lee had been ruled out previously, stating that they applied to the negro's condition—whether he was nervous or not. Solicitor Dorsey remarked that the state was perfectly willing for all reference to Lee being nervous to be stricken from the record.

"Your honor," said Mr. Rosser, "It's not a favor that they are conferring up on me, but it has at last dawned upon them that it is illegal."

LEE'S TESTIMONY STANDS.

Attorney Hooper replied, addressing the court, "I don't want it to go down in records, your honor, what my friend Rosser has just said in regard to it taking a long time for anything to dawn upon us. Mr. Rosser's statement was one of criticism, and I don't care

for him to pass upon how long it takes anything to soak into my head."

Mr. Hooper's remarks were in the nature of a rebuke to Mr. Rosser. Nothing was done, however, by the court, and the trial proceeded. Mr. Dorsey seemed oblivious of Mr. Rosser's criticism.

Judge Roan ruled out all references to Newt Lee's demeanor during the trial of the case. This was done at the solicitor's instance, by agreement of both sides. All questions brought answers regarding Newt Lee's demeanor, and all answers to that effect, were ordered stricken from the records. The trial went on.

"Did you see the financial sheet Monday morning?"

"Yes. Frank picked it up and said something about it."
"After Gantt was discharged, did he come to the factory?"

"Yes, once or twice."

"Did you see Frank examine the financial sheet Sunday?"

"I think so. I know I looked at it."

"When did Mr. Haas, the agent for the insurance company, come down to the factory?"

"About May 1."

"When was the factory cleaned up after that?"

"May 3."

The solicitor pointed to the spot on the diagram where the bloody stick is supposed to have been found, and asked if that area was cleaned up. Orders for a general cleaning had been given, answered the witness. He didn't know anything about that particular area.

ARNOLD QUESTIONS DARLEY.

Attorney Arnold took up the cross-examination, asking who called Darley's attention to the blood spots which Barrett claimed to have found.

"Lemmie Quinn."

The state objected to Attorney Arnold's use of the phrase "claimed to have been found." Judge Roan sustained the objection.

Attorney Arnold asked the witness about the hair on the lathe. Darley said that he was shown six or eight hairs on a lathe which is about twenty feet from Mary's machine. It was difficult to tell the color of the hair, he said.

"Barrett had be[e]n doing most of the discovering around the factory, hadn't he?" asked Mr. Arnold.

The state objected. Attorney Arnold said: "We want to show that Barrett is a monomaniac on this subject; that he buys all the extras, and is working for a reward." After some discussion, the state's objection was sustained and the question ruled out.

"Who showed you the hair, then?" asked Mr. Arnold.

"Quinn, Barrett and The Journal reporter," answered the witness.

Mr. Arnold asked about the blood spots.

The witness described them as looking to him like blood spots, with a white smear over them.

"Did Barrett say he was working for a reward?" asked Arnold.

The state objected and Attorney Arnold said: "We simply want to show, your honor, that Christopher Columbus wasn't in it with this Barrett." The state's objection was sustained by Judge Roan.

"Were you there when Barrett said he found a piece of pay envelope under Mary Phagan's machine?" asked Mr. Arnold.

PAY ENVELOPES COMMON.

The witness said he was not there. The pay envelope was shown to the witness, who in answer to questions said that about 175 similar envelopes were used in the factory every week. Most of them were thrown around. It was a rule that if an inaccuracy was found by an employe in his pay envelope after he left the factory, he could not recover anything.

Pay envelopes generally were thrown away on the second floor, he said. Attorney Arnold asked the witness if he remembered seeing Frank take out the slip from the time clock Sunday morning. Yes, he did, said the witness.

He looked over Frank's shoulder at the slip, and then thought himself that it was incorrect. The time slip was exhibited to him, and he showed how Frank ran his finger down the side on which the numbers were.

The witness stated that there were no breaks although there were lapses of time, and that because there were no breaks he at first glance thought that the clock had been punched regularly and correctly.

EXPLAINS TIME SLIP.

At this point Juror Johenning said that he wanted to ask a question. The juror asked the witness to go further into his explanation about the time slip. Standing by the jury box with the slip in his hand, Darley went over the matter again, detailing how the lapses in time occurred without a break in the space.

Attorney Arnold asked the witness if the financial sheet for that week had been made out in Frank's own writing. The witness said yes.

Attorney Hooper objected to any questions about the financial sheet, saying that it would be the best evidence about itself.

Attorney Arnold retorted: "You needn't be afraid we won't introduce evidence."

This was the first intimation from the defense as to whether it would introduce evidence.

Attorney Arnold had the witness go into the different details covered by the financial sheet, his purpose being to show the amount of work, expert work, to make out the sheet. Darley said that it required such expert work that there hadn't been a financial sheet made out since Frank left the factory, although it was custom to have them made every week.

Darley continued that Frank usually started on the financial sheet about 2:30 o'clock on Saturday and finished it about 5:30 or later. When shown the sheet, he declared that it was all in Frank's handwriting. No work had been done on it when he left the factory about 9:40 o'clock.

Mr. Arnold asked the witness how the handwriting by Frank on the financial sheet in evidence, compared with Frank's handwriting on previous financial sheets.

WANTED COMPARISON.

Solicitor Dorsey objected on the ground that the previous sheets themselves were the best possible evidence, and that Darley was no handwriting expert and therefore was not competent.

The solicitor read a section of the Georgia code to support that view.

There followed a twenty-minute argument on this question, in which all four of the principal attorneys at various times took the floor. Attorney Hooper, in one of his arguments, said that the defense had no right to show this sheet to the jury without showing previous sheets so that the jury itself could compare them. "You need have no fear, Mr. Hooper," said Mr. Arnold. "They'll be introduced at the proper time."

At the conclusion of this questioning, Judge Roan withheld his decision until he could look up authorities in the matter.

Attorney Arnold questioned the witness on the various items in the financial sheet and the calculations. Darley said that it was necessary in computing the sheet to go into each individual item on the sheeet.

At the conclusion of this questioning, the solicitor asked, "Are you through with him, Mr. Arnold?"

"Oh, no, no," replied Mr. Arnold. "We haven't got a good start with him yet."

"On Sunday you were in the pencil factory, were you not?" continued Mr. Arnold, addressing the witness.

"Yes."

"Detective Starnes was there, wasn't

"Yes."

"He went through the factory with you, didn't he?"

"Yes."

"Forty or fifty people were in that building on Sunday, were there not?"

"Not Sunday. My recollection is that there were six or eight there."

"Did you go down into the basement?"

"Yes."

"There was a great deal of excitement, wasn't there?"

"Yes."

"You were excited, weren't you?"

EVERYBODY EXCITED.

"Yes."

"Everybody was excited."

Solicitor Dorsey objected. Attorney Arnold argued the point. The defense had the right to show the state of mind of everybody else in the factory, in order to compare it with Frank's conduct. He spoke of Frank's having missed his breakfast and his coffee that morning, and remarked, "Everybody that drinks coffee knows that when an habitual user misses his usual drink he is unnerved." The policemen were excited, said he. "I think I have the right to show that Frank manifested merely natural excitement. This young man was superintendent of the factory, and a little girl had been murdered there. It was no more than natural to assume that he had been perturbed. The state seems to be basing its whole prosecution on whether or not Frank was excited on the morning

the body was discovered. This is a question which never should have been admitted to the case."

Attorney Rosser followed Mr. Arnold with argument upon the point. "Let me tell you what I saw once," said he. "We had a riot here some years ago. I saw 200 men and they were all excited. Now suppose they tried me for lunacy and told of my excitement—said that I made a fool of myself. Would you hold that I couldn't say that anybody else around me was excited?"

Solicitor Dorsey argued the point from the state's standpoint. "They've gone on record that you couldn't take up the deportment of Lee and compare it with that of Frank," said he. "They objected to our doing that, and they got it into the records. I want to know how far this is going to continue. Are you going to open the flood gates and show the deportment of every man who went into the factory, when the only question at issue is the deportment of Frank?"

Attorney Arnold asked Darley what was the condition of the other people around the factory that morning.

Solicitor Dorsey immediately renewed the objection.

Attorney Rosser declared: "This jury won't know but that Frank was the sole man who was nervous that morning. The jury wont' know that my friend Starnes, sleuth that he is, and that son of the Emerald Isle, Pat Campbell, were excited when they looked on that girl's body. Are you going to take this young man and show how it affected him, and close the mouths of all these other witnesses?"

ROSSER'S WARNING.

"Your honor, I want to impress on you that a misstep here would vitiate this whole trial."

A moment later Mr. Rosser repeated this statement—taken to mean conclusively that the defense is laying its foundations for an appeal.

Solicitor Dorsey arose.

"If there is any doubt in your honor's mind," said the solicitor, "about this matter. I have here a number of decisions. This question they are seeking to put is simply a dragnet proposition. They want to run them all in on it." The solicitor read two or three decisions to sustain his contention.

"Wouldn't it be monstrous, your honor, to go outside of this trial and this evidence, and run in everybody and anybody to show that they may or may not have been nervous. The one point to be made before this jury is as to whether or not the defendant was nervous. At the insistence of the defense, the state already has agreed and your honor has ruled that a similar question applying to Newt Lee should be withdrawn from the record."

"I adhere to my former ruling," said Judge Roan.

Attorney Arnold arose.

"I purpose to prove by this witness, your honor, that he himself was excited and nervous, and that the others present were nervous and excited."

"Perhaps that's a different question," said the Judge. "I thought you wanted to go out and bring in others who were not present. If you want to show that he and others were excited from the same cause that might be a different proposition."

Judge Roan asked the solicitor if he renewed his objection.

"I most certainly do, your honor," answered the solicitor.

Judge Roan announced that he would hold to his former ruling.

Resuming his cross-examination of the witness, Attorney Arnold asked:

"Isn't it a fact that there are a good many spots on the metal room floor, and that you have seen spots there from time to time.?"

"Yes, I've seen spots all over the factory."

"Red spots and dark spots?"

"Yes."

ABOUT RED SPOTS.

"How long have you worked in factories?"

"Twenty-four years."

"Large numbers of women worked in these factories?"

"Yes."

"Isn't it a usual and frequent fact that blood spots are found around the women's dressing rooms and closets?"

"This is a well known fact?"

"Yes."

"You've seen such spots at this factory?"

"Yes."

"You nailed up the back door. Why did you do that?"

"Because the staple had been pulled out."

"You did so because you had had more experience in that line than Frank, did you not?"

"Yes, that was one reason, and Frank was nervous, too."

"Frank wore a brown suit on Saturday?"

"Yes."

"And on Monday he wore the same brown suit?"

"Yes."

"Were you accustomed to see him on Sundays?"

"No."

"Then you couldn't tell what kind of clothes he wore usually on Sundays?"

"No."

"He wore a different one the Sunday you saw him at the factory?"

"Yes."

"But you don't know about his Sunday clothes?"

"No."

"Well, on Monday did you observe any spots on the brown suit worn by Frank then and on Saturday?"

"No, sir."

FRANK NOT SCRATCHED.

"Did you observe any scratches or bruises on his face or hands?"

"I didn't see any."

"Saturday morning when you came to the factory, Frank was there, was he not?"

"Yes."

"Whom else did you find there?"

"Mattie Smith, one of the employes, was in the office. She came for her own and her sister-in-law's pay. She found that her sister-in-law's time was wrong. Frank told her to wait a little while and he would straighten it out, that he didn't want to get his cash out of balance. The girl gave me back the money when she found it was wrong. The mistake was made on account of the similarity of the two girls' names. Mattie Smith's sister-in-law was named Mamie Smith, and Mamie's pay had been put in Mattie's envelope. Frank corrected this mistake. Then the girl called my attention to the fact that we had promised to raise Mamie's pay, but hadn't done it. I told her we would straighten this out next week."

WHY MATTIE SMITH CRIED.

"I asked her how her father was. She replied that ‘He is dying, I think.' I assisted her from the office down the stairs to the street door. She was crying. She asked me if the office would aid her in the matter of funeral expenses for her father. I sought to console and [1 word illegible] her. I told her we would do whatever we could for her, and advised her not to worry about her sister-in-law's time."

Attorney Arnold inquired, "What time was it when Mattie Smith left the factory?"

"About 9:20 o'clock," the witness answered.

"Then you went back upstairs to the office?"

"Yes.

"What time was it Frank went to Montag Brothers?"

"About 9:40 o'clock. We went out together. We stopped at a soda fountain a short distance up the street, and got a drink. Afterward Frank went on to Montag's and I didn't see him again until next morning."

"Was the elevator locked or unlocked on Sunday morning?"

"It was unlocked, but the lock was in place."

"Could anybody have started the elevator?"

"Yes."

"Does the same motor that drives the elevator drive the saw?"

"Yes."

"Do both the elevator and the saw run at the same time?"

"Yes, unless the belt to the saw is thrown off."

"When the elevator is running, it makes a great deal of noise, does it not?"

ELEVATOR'S NOISE.

"Yes, it makes a great deal of noise, but not as loud when it starts as when it stops at the bottom."

"About these cords, Mr. Darley—they can be found all over the factory, can't they, from the basement to the top?"

"Yes, sir."

"They frequently are swept up into the trash, are they not?"

"Yes, sir. I often make complaints about that."

"A great deal of waste is gathered up in the factory, is it not?"

"Yes, sir, several truck loads every day."

"When was it you say the factory was cleaned up?"

"It was given a special cleaning on May 3, but it was given a general cleaning on the Tuesday after the murder."

"There are many crevices and corners that haven't been cleaned yet, aren't there?"

"Yes, sir."

"How long is the factory building?"

"Between 150 and 200 feet, I should say."

"And it's about 70 to 100 feet wide?"

"Yes, sir."

"The factory is an extremely dirty place, is it not?"

"Yes, sir."

"In some places the gum and dirt is about an inch thick, is it not?"

"Yes, sir."

"And it's about one-eighth of an inch thick in some places on the metal room floor?"

"Yes."

"Isn't it dark on the first floor and in the basement?"

"It is very dark in the basement, and quite dark on the first floor when the front doors are closed?"

"Is it dark around the wall on the first floor near the radiator?"

"Yes, sir; especially so on cloudy days."

"What kind of a day was it on April 26?"

"It was very dark and misty all day."

"What was on the first floor on that day?"

"A dozen or more large empty boxes were piled there."

"There were plenty of places for a man to hide in those boxes, weren't there?"

"Yes, sir."

"There's not so much light on the second floor, between the time clocks and the metal room doors, is there?"

"No, sir."

"Well, how is it in the little walkway off to the left from the metal room?"

"It is very dark."

"From Frank's private office at the desk, you can't see the steps, can you?"

"No."

"How far is it from his office to the metal room?"

"About 100 feet."

"Can the doors to the metal room be locked?"

"No."

"Behind this dressing room, what is there?"

"It's used as a storeroom for worthless stock, and also there are three or four vats in there."

In answer to questions, the witness said that a person practically could have the run of the factory without being seen from Frank's office.

"How did you happen to go to Solicitor Dorsey's office?"

"Twice I was served with subpoenas and once he phoned for me."

"Did you know that he had no right to subpoena you?"

"Not then."

"Did you know that those subpoenas were not worth the paper they were written on?"

"I since have heard so."

"The first time you went to his office, who was there?"

"Chief Lanford, Mr. Stephens, Mr. Dorsey and the stenographer."

"Did they all ask you questions?"

"All but the stenographer. One of them would ask a question sometimes before I could finish my answer to another's question."

"Who was there the second time?"

"Mr. Dorsey, Detectives Starnes and Campbell and a stenographer. Then I was questioned only by Mr. Dorsey."

"Is Frank a man of a nervous temperament?"

FRANK'S NERVOUS TEMPERAMENT.

"Yes, whenever the smallest thing went wrong at the factory he would get very nervous and upset, and would go about rubbing his hands. I've seen him do it a thousand times."

The witness said that he considers his own nerves good; that he would take charge when Frank became nervous. Darley was shown the notes found by Mary Phagan's body. Scratch paper like that on which one of the notes was written was to be found generally through the factory, said he, as many of the tablets were used.

Order blank paper like that on which the second note was written often was thrown on the floor and swept up in the rubbish, he said. The witness said that despite orders, the time clock door was unlocked on Saturday, and that anyone who understood the clock could have made regular punches for a whole night within five minutes. Darley said that he had seen Wade Campbell, a man named Lynes, and a man Irby, at the factory on Saturday.

At this point, at 12:20 o'clock, Judge Roan announced recess of the court until 2 o'clock.

ROAN REVERSES RULING.

Immediately after convening court Friday afternoon Judge L. S. Roan announced that during the noon recess he had given due

consideration to two points raised during the morning, on one of which he had ruled and on the other of which he had reversed his ruling.

At the morning session Solicitor Dorsey objected to a question put by the defense to Darley, saying that Darley could not testify as to whether or not the handwriting by Frank on the financial sheet produced in evidence was like that on previous financial sheets drawn by Frank; that the other sheets themselves were the best evidence.

On that point, said Judge Roan, he ruled that Darley could not testify unless he qualified as a handwriting expert; that the defense would have to introduce the other writings and allow those writings to speak for themselves to the jury.

On the second point, Judge Roan said, he reversed his ruling. That point was on an objection by the state that the defense should not be allowed to show the mental condition of others than Frank in the factory on Sunday morning, April 27. Judge Roan ruled with the solicitor at the morning session. This was the ruling which he reversed, giving his decision instead to the contention of the defense.

N. V. Darley, general manager at the National Pencil factory, resumed the stand at the afternoon session, the defense resuming its cross-questioning of him.

"At my request, did you look over the pencil factory during the noon hour?" began Mr. Arnold.

"Yes, sir."

DIAGRAM INACCURATE.

"I want you to state whether or not there are any inaccuracies in this drawing. If so, tell me what they are."

Darley took Mary Phagan's parasol as a pointer and pointed to the stairway at the rear of the basement leading to the first floor, and said: "These steps are too short. The incline is seventeen feet. Apparently this isn't the correct proportion."

"What is the space between the wall of the elevator shaft and Frank's office?"

"It's five feet."

"How wide is the elevator shaft?"

"About ten feet."

"Well, isn't the space on this diagram between the walls of the elevator shaft and Frank's office almost as wide as the elevator shaft itself?"

"Yes."

"Then the drawing is out of proportion, is it?"

"Yes."

"Anybody coming down the steps between the second floor and the third floor of the building has a full view of the time clock?"

"Yes, sir."

"Anybody coming down these stairs could see anybody in the metal room, couldn't he?"

"Yes, sir."

"Did you ever see Frank as nervous as previously as on the morning of the murder?"

FRANK USUALLY NERVOUS.

"Yes, sir. One day he saw a little girl run down by a street car, and he was so nervous that he couldn't work on his books."

"Frank is of an extremely nervous temperament, isn't he?"

"Hardly a day goes by that he does not become nervous."

"Was everybody nervous around the pencil factory Sunday morning?"

"Yes."

"Were you nervous?"

"Yes. I didn't tremble though."

"Mr. Darley, I want to call your attention to another mistake in this picture. Isn't the bottom of the ladder leading from the first floor into the basement closer to the elevator than this diagram shows?"

"The distance between the bottom of the ladder and the elevator shaft is six feet."

"Doesn't it appear to be more in this drawing? Doesn't it look as if it was as far as the width of the elevator shaft?"

"Almost as far."